



AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.**

**S. 4159**

To amend the Electronic Signatures in Global and National Commerce Act to accommodate emerging technologies.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. THUNE

Viz:

1 Strike all after the enacting clause and insert the following:  
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “E-SIGN Modernization  
5 Act of 2020”.

6 **SEC. 2. REQUIREMENTS FOR CONSENT TO ELECTRONIC  
7 DISCLOSURES.**

8 (a) IN GENERAL.—Title I of the Electronic Signa-  
9 tures in Global and National Commerce Act (15 U.S.C.  
10 7001 et seq.) is amended—

11 (1) in section 101(c) (15 U.S.C. 7001(c))—

1           (A) in paragraph (1), by striking subpara-  
2           graphs (C) and (D) and inserting the following:

3           “(C) the consumer, prior to consenting, is  
4           provided with a statement of the hardware and  
5           software requirements for access to and reten-  
6           tion of the electronic records; and

7           “(D) after the consent of a consumer in  
8           accordance with subparagraph (A), if a change  
9           in the hardware or software requirements need-  
10          ed to access or retain electronic records creates  
11          a material risk that the consumer will not be  
12          able to access or retain a subsequent electronic  
13          record that was the subject of the consent, the  
14          person providing the electronic record provides  
15          the consumer with a statement of—

16                 “(i) the revised hardware and soft-  
17                 ware requirements for access to and reten-  
18                 tion of the electronic records; and

19                 “(ii) the right to withdraw consent  
20                 without the imposition of any fees for such  
21                 withdrawal and without the imposition of  
22                 any condition or consequence that was not  
23                 disclosed under subparagraph (B)(i).”;

24          (B) by striking paragraph (3); and

1                   (C) by redesignating paragraphs (4), (5),  
2                   and (6) as paragraphs (3), (4), and (5), respec-  
3                   tively;

4                   (2) by striking section 105 (15 U.S.C. 7005);  
5                   and

6                   (3) by redesignating sections 106 and 107 (15  
7                   U.S.C. 7006, 7001 note) as sections 105 and 106,  
8                   respectively.

9                   (b) TECHNICAL AND CONFORMING AMENDMENTS.—

10                   (1) ECONOMIC GROWTH, REGULATORY RELIEF,  
11                   AND CONSUMER PROTECTION ACT.—Section  
12                   215(f)(2) of the Economic Growth, Regulatory Re-  
13                   lief, and Consumer Protection Act (42 U.S.C.  
14                   405b(f)(2)) is amended by striking “section 106 of  
15                   the Electronic Signatures in Global and National  
16                   Commerce Act (15 U.S.C. 7006)” and inserting  
17                   “section 105 of the Electronic Signatures in Global  
18                   and National Commerce Act”.

19                   (2) ELECTRONIC FUND TRANSFER ACT.—Sec-  
20                   tion 920(g)(2)(A) of the Electronic Fund Transfer  
21                   Act (15 U.S.C. 1693o-1(g)(2)(A)) is amended by  
22                   striking “section 106(2) of the Electronic Signatures  
23                   in Global and National Commerce Act (15 U.S.C.  
24                   7006(2))” and inserting “section 105(2) of the Elec-

1       tronic Signatures in Global and National Commerce  
2       Act”.

3               (3) ELECTRONIC SIGNATURES IN GLOBAL AND  
4       NATIONAL COMMERCE ACT.—The Electronic Signa-  
5       tures in Global and National Commerce Act (15  
6       U.S.C. 7001 et seq.) is amended—

7               (A) in section 201(a)(2) (15 U.S.C.  
8               7021(a)(2)), by striking “section 106” and in-  
9               serting “section 105”; and

10              (B) in section 301(e) (15 U.S.C. 7031(e)),  
11              by striking “section 106” and inserting “section  
12              105”.

13       (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
14       tion, or the amendments made by this section, may be con-  
15       strued as affecting the consent provided by any consumer  
16       under section 101(e) of the Electronic Signatures in Glob-  
17       al and National Commerce Act (15 U.S.C. 7001(e)) before  
18       the date of enactment of this Act.